

# EXHIBIT 4

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**From:** James Bartolomei <james@duncanfirm.com>  
**Sent:** Friday, October 9, 2020 12:15 PM  
**To:** Schmitt, Johanna; Bryan D. Hoben  
**Cc:** Lipsitz, Ari E.; Cendali, Dale M.; \*jamesrosenfeld@dwt.com; amandalevine@dwt.com; Nancy E. Wolff (nwolff@cdas.com); \*Ledelstein@cdas.com; Richard Quintus  
**Subject:** RE: Sinclair v. Mashable: Facebook's Response to Subpoena



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Dear Johanna,

After further analyzing non-party Facebook's objections to Plaintiff's subpoena for a 30b6 of Facebook and production of documents, Plaintiff will not consent to written depositions questions. Plaintiff maintains that the topics for the 30b6 deposition are sufficiently described in the subpoena. Plaintiff intends to ask questions limited to the issues raised in the Second Amended Complaint and necessary testimony from Facebook as it relates to Instagram, Mashable and Plaintiff without creating an undue burden on Facebook. There are general topics and specific ones that are fair game (with language directly quoted from Instagram's Terms of Use and Platform Policy) and will likely lead to both relevant and admissible evidence in the case at hand. Please produce all such documents pursuant to the subpoena by October 30, 2020 and share the name(s) of Facebook's 30b6 designee. Where good cause exists, Facebook may designate any documents as confidential pursuant to the protective order that the court entered and which I previously shared with you.

Before we can coordinate a mutually agreeable date for a 30b6 deposition from Facebook, Defendant Mashable needs to produce and adequately respond to Plaintiff's discovery requests which have been inadequate to date. As of today, Mashable has not produced one document despite discovery requests pending since August 2020.

We will be in touch shortly to coordinate a deposition date. Have a safe and pleasant weekend.

Jim

James H. Bartolomei, Esq.  
Of Counsel



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---

**From:** James Bartolomei

**Sent:** Monday, October 5, 2020 10:39 AM

**To:** 'Schmitt, Johanna' <johanna.schmitt@kirkland.com>; Bryan D. Hoben <bryan@hobenlaw.com>

**Cc:** Lipsitz, Ari E. <ari.lipsitz@kirkland.com>; Cendali, Dale M. <dale.cendali@kirkland.com>; \*jamesrosenfeld@dwt.com <jamesrosenfeld@dwt.com>; amandalevine@dwt.com; Nancy E. Wolff (nwolff@cdas.com) <nwolff@cdas.com>; \*Ledelstein@cdas.com <Ledelstein@cdas.com>

**Subject:** RE: Sinclair v. Mashable: Facebook's Response to Subpoena - Meet and Confer (330pm EST)

Johanna –

Attached is the agreed protective order that the court entered this morning which the model order provided by Judge Moses. We plan to narrow the topics for a deposition and will share an updated notice.

This also confirm that we are continuing the deposition date of 10/15/2020 pending our collective efforts to narrow the 30b6 topics without the need for court intervention.

Sincerely,

James H. Bartolomei, Esq.  
Of Counsel



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**From:** Schmitt, Johanna <[johanna.schmitt@kirkland.com](mailto:johanna.schmitt@kirkland.com)>

**Sent:** Monday, October 5, 2020 8:40 AM

**To:** James Bartolomei <[James@duncanfirm.com](mailto:James@duncanfirm.com)>; Bryan D. Hoben <[bryan@hobenlaw.com](mailto:bryan@hobenlaw.com)>

**Cc:** Lipsitz, Ari E. <[ari.lipsitz@kirkland.com](mailto:ari.lipsitz@kirkland.com)>; Cendali, Dale M. <[dale.cendali@kirkland.com](mailto:dale.cendali@kirkland.com)>; \*jamesrosenfeld@dwt.com <[jamesrosenfeld@dwt.com](mailto:jamesrosenfeld@dwt.com)>; amandalevine@dwt.com; Nancy E. Wolff ([nwolff@cdas.com](mailto:nwolff@cdas.com)) <[nwolff@cdas.com](mailto:nwolff@cdas.com)>; \*Ledelstein@cdas.com <[Ledelstein@cdas.com](mailto:Ledelstein@cdas.com)>

**Subject:** RE: Sinclair v. Mashable: Facebook's Response to Subpoena - Meet and Confer (330pm EST)

Hi Jim and Bryan,

I am emailing to confirm some points we discussed at the meet and confer regarding the Facebook subpoena on September 30th.

In terms of next steps, you are considering our proposal to conduct the deposition by written questions and will get back to us. You are also re-reviewing the topics in the subpoena and will provide a written proposal to narrow them and specify what information you are seeking so that Facebook may consider further.

In terms of the protective order, we understand that defendant's counsel is preparing a draft and you/they will share that draft with us for review. As discussed, the protective order should include a standard two-tier

confidentiality and highly-confidential/attorneys-eyes-only protection, as well as provide that deposition transcripts will be considered HC/AEO for 30 days in order to review and designate testimony accordingly.

Lastly, we agreed that the date for deposition testimony noticed on the subpoena has been rescheduled, pending further discussion and pending the entry of a protective order. As such, the return date listed on the subpoena to Facebook of October 15, 2020 is not operative, and Facebook reserves the right to seek judicial relief beyond that date as needed.

Best,  
Johanna

**Johanna Schmitt**

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**KIRKLAND & ELLIS LLP**

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[johanna.schmitt@kirkland.com](mailto:johanna.schmitt@kirkland.com)

-----Original Appointment-----

**From:** James Bartolomei <[James@duncanfirm.com](mailto:James@duncanfirm.com)>

**Sent:** Sunday, September 27, 2020 11:15 AM

**To:** James Bartolomei; Schmitt, Johanna; Bryan D. Hoben

**Cc:** Lipsitz, Ari E.; Cendali, Dale M.; [\\*jamesrosenfeld@dwt.com](mailto:*jamesrosenfeld@dwt.com); [amandalevine@dwt.com](mailto:amandalevine@dwt.com)

**Subject:** Sinclair v. Mashable: Facebook's Response to Subpoena - Meet and Confer (330pm EST)

**When:** Wednesday, September 30, 2020 3:30 PM-4:30 PM (UTC-06:00) Central Time (US & Canada).

**Where:** <https://duncanfirm.zoom.us/j/92489725317?pwd=bVhNUkxjRUdETHgwNEYwK1N2SGpPdZ09>

<https://duncanfirm.zoom.us/j/92489725317?pwd=bVhNUkxjRUdETHgwNEYwK1N2SGpPdZ09>

Meeting ID: 924 8972 5317

Passcode: 040924

One tap mobile

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+13126266799,,92489725317# US (Chicago)

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**From:** Schmitt, Johanna <[johanna.schmitt@kirkland.com](mailto:johanna.schmitt@kirkland.com)>

**Sent:** Friday, September 25, 2020 12:51 PM

**To:** Bryan D. Hoben <[bryan@hobenlaw.com](mailto:bryan@hobenlaw.com)>

**Cc:** James Bartolomei <[James@duncanfirm.com](mailto:James@duncanfirm.com)>; Lipsitz, Ari E. <[ari.lipsitz@kirkland.com](mailto:ari.lipsitz@kirkland.com)>; Cendali, Dale M. <[dale.cendali@kirkland.com](mailto:dale.cendali@kirkland.com)>; [\\*jamesrosenfeld@dwt.com](mailto:*jamesrosenfeld@dwt.com) <[jamesrosenfeld@dwt.com](mailto:jamesrosenfeld@dwt.com)>; [amandalevine@dwt.com](mailto:amandalevine@dwt.com)

**Subject:** RE: Sinclair v. Mashable: Facebook's Response to Subpoena

Bryan,

Wednesday afternoon works best for me. Would 4:00 or 4:30 work? If so, please circulate a calendar invite and dial in. In the meantime, could you please let me know what the status of the protective order in this case? Are you negotiating one between the parties (which will cover non-parties) to submit to the Court?

Regards,  
Johanna

**Johanna Schmitt**

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[johanna.schmitt@kirkland.com](mailto:johanna.schmitt@kirkland.com)

**From:** Bryan D. Hoben <[bryan@hobenlaw.com](mailto:bryan@hobenlaw.com)>

**Sent:** Friday, September 25, 2020 1:12 PM

**To:** Schmitt, Johanna <[johanna.schmitt@kirkland.com](mailto:johanna.schmitt@kirkland.com)>

**Cc:** [james@duncanfirm.com](mailto:james@duncanfirm.com); Lipsitz, Ari E. <[ari.lipsitz@kirkland.com](mailto:ari.lipsitz@kirkland.com)>; Cendali, Dale M. <[dale.cendali@kirkland.com](mailto:dale.cendali@kirkland.com)>; [jamesrosenfeld@dwt.com](mailto:jamesrosenfeld@dwt.com) <[jamesrosenfeld@dwt.com](mailto:jamesrosenfeld@dwt.com)>; [amandalevine@dwt.com](mailto:amandalevine@dwt.com)

**Subject:** Re: Sinclair v. Mashable: Facebook's Response to Subpoena

Johanna,

A pleasure to meet you. We appreciate your client's timely response.

I'd like to see if we can set up a time later in the afternoon on either Tuesday or Wednesday of next week for a call where we can try to narrow the issues down. With an eye toward getting more granular, are you able to say whether your client would be seeking a blanket protective order for everything discussed, as its response document appears to indicate, or would it be amenable to a more selective approach that identifies specific areas of concern? If the latter, we suggest it would streamline things if you were able to send over a proposal concerning this terrain prior to the call.

Sincerely,

**Bryan D. Hoben**

Attorney at Law

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On Thu, Sep 24, 2020 at 2:20 PM Schmitt, Johanna <[johanna.schmitt@kirkland.com](mailto:johanna.schmitt@kirkland.com)> wrote:

Dear James and Bryan,

We are counsel for Facebook in connection with the subpoena you served in the *Sinclair v. Mashable* case. Attached please find Facebook's written objections and responses to the subpoena. Let me know if you'd like to set up a time to discuss the form and timing of the deposition, as well as any issues regarding scope.

Regards,  
Johanna

**Johanna Schmitt**

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